

**FREEDOM OF INFORMATION COMMISSION STATEMENT
REGARDING RB 6305 AN ACT CONCERNING IMPLEMENTATION OF
THE SUSTINET PLAN**

The stated purpose of this bill is to implement the SustiNet Plan. While the Freedom of Information ("FOI") Commission applauds both the authors of the Sustinet Plan and of this bill for acknowledging in Section 3, subsection (a) (lines 81-89) that the SustinNet Plan Authority is a political subdivision of the State of Connecticut, and is thereby subject to the open government provisions of the Freedom of Information ("FOI") Act, the FOI Commission has some questions concerning subsection (q) of that same section. Subsection (q) states that the authority will be subject to chapter 14 of the general statutes (the FOI Act), but then states that several items shall be exempt and not subject to disclosure.

The FOI Commission is concerned that the exemptions to disclosure set forth in Section 3(q) may be unnecessarily broad (lines 245-257). For example, (1) exempts the names and applications of SustiNet Plan enrollees. Why is it necessary to exempt the names of persons enrolled in this governmental program? Also, to the extent information contained in the application is personal or medical in nature, such information, would likely be exempt from disclosure pursuant to Conn. Gen. Stat. 1-210(b)(2). Also, with regard to item (3), it is unclear why it is necessary to protect provider negotiations and compensation arrangements. Shouldn't the public know what those arrangements are? Finally, (4) exempts information obtained through "confidentiality agreements" entered into pursuant to the provisions of section 10 of the bill. The scope and breadth of such confidentiality needs to be better defined. At present the language in Section 10. (lines 685-692) simply references confidentiality agreements that are in "conformance" with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Thought ought to be given about what this means and how broad such confidentiality agreements will go. Ordinarily, and for good reason, contract provisions cannot supersede the FOI Act - only federal law and state statute can.

In short, the FOI Commission urges further review of these provisions as they relate to the transparency of this monumental governmental program. It would welcome the opportunity to further discuss these provisions with the authors of this bill.

To the extent House Bill 6323, An Act Making Conforming Changes to the Insurance Statutes Pursuant to the Federal Patient Protection and Affordable Care Act, and Establish a State Health Partnership Program, has similar provisions to RB 6305, relative to the Connecticut Health Exchange (see Section 14, lines 661-670 and 834-844), the FOI Commission reiterates its position above, with respect to such provisions. Finally, the FOI Commission notes that Senate Bill 921, An Act Establishing a State Health Insurance Exchange does not definitively indicate whether the Exchange will be subject to the provisions of Chapter 14 (the FOI Act), although it does indicate it will be a "political subdivision of the state" (see Section 2, lines 121-127). Although such language would be sufficient to find that the entity is subject to the FOI Act were a case brought to the FOI Commission, it might be worthwhile to precisely state that the

Connecticut Health Insurance Exchange will be subject to the FOI Act, to avoid any confusion in this regard. The FOI Commission further notes that this bill does not contain the exemptions to disclosure set forth in RB 6305 and HB 6323; therefore the comments with respect to such exemptions are inapplicable to this bill.

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